



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1995

Mr. Jerry B. Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR95-287

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28881.

The City of Laredo (the "city") has received two requests for information relating to overtime paid to city employees and one request for information relating to a certain bank account. Specifically, the requestor seeks "a list of all the employees assigned to the Police Department of the City of Laredo who received overtime pay" during a four year period, including "the name and job title of each employee, and the total amount of overtime wages paid to each during that period." In addition, the requestor seeks information regarding "Checking Account No. 7081030-01 of the International Bank of Commerce." You claim that section 552.108 of the Government Code excepts from required public disclosure the requested overtime information and that the requested bank account information is not subject to the Open Records Act.

We address first whether the city may withhold the requested overtime information under section 552.108. Section 552.108 excepts from required public disclosure

[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]

[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

When the "law enforcement" exception is claimed as a basis for withholding internal records of a law enforcement agency, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why the release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

After reviewing the records you submitted for review, we conclude that you have not met your burden of establishing that releasing any of the overtime information specifically requested would unduly interfere with law enforcement. In your first letter to this office, you argued that releasing the requested information would reveal the identities of undercover narcotics officers. Apparently, in response to your letter, the requestor indicated that he would accept the records with the identities of the undercover officers redacted. In your second letter to this office, you argued that releasing the requested information with the identities of only the undercover officers redacted would permit the identification of the undercover officers through a process of elimination. In addition, you proposed that your concerns about the identification of undercover officers could be resolved by releasing the requested information with no identities redacted. We agree. The amount of overtime paid to each individual alone does not appear to distinguish undercover officers from other police department personnel. Only one piece of information appears to distinguish undercover officers from other police department personnel, and this information is not the type of information requested. You may withhold this piece of information, which we have marked, under section 552.108. Furthermore, nothing in the Open Records Act requires you to release the requested information in the order that it was submitted to us for review. Thus, you may choose to alter the order of the information presented on the printouts.

Next, we address whether the requested bank account information is subject to the Open Records Act. You contend that this information is not subject to the Open Records Act because the bank account is held by a private association of Laredo police officers for a private purpose. In essence, you claim that this information is not in the possession of a governmental body and is therefore not subject to the Open Records Act.

The definition of the term "governmental body" encompasses all public entities in the executive and legislative branches of government at the state and local levels. Although a sheriff's office, for example, is not within the scope of section 552.003(a)(1) - (9), it is supported by public funds and is therefore a "governmental body" within section 552.003(a)(10). Open Records Decision No. 78 (1975) (discussing statutory predecessor to section 552.003(a)(10)); see *Permian Report v. Lacy*, 817 S.W.2d 175 (Tex. App.—El Paso 1991, writ denied) (suggesting that county clerk's office is subject to Open Records Act as agency supported by public funds). "Governmental body" is thus defined in section 552.003(a) of the Government Code to mean, among other things, "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds."

Consequently, the Open Records Act may apply to private entities that receive public funds. The Open Records Act, however, does not apply to private persons or businesses simply because they provide goods or services under a contract with a governmental body. Open Records Decision Nos. 621 (1993); 602 (1992); 1 (1973).; *see also* Open Records Decision No. 228 (1979) at 2; *see also Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988) (discussed below), *rev'g* 650 F. Supp. 1047 (W.D. Tex. 1986), *cert. denied*, 488 U.S. 1042 (1989); Attorney General Opinion JM-821 (1987).

You advise us that bank account at issue here "is held by a private association of officers of the Laredo Police Department for a private purpose, and that the funds come from private sources." The requestor, on the other hand, characterizes the circumstances surrounding the bank account as such that would bring information relating to the bank account and the police officer association within the scope of the Open Records Act. This office is not authorized to resolve disputed questions of fact. *See, e.g.*, Attorney General Opinions DM-98 (1992) at 3; H-56 (1973); M-187 (1968); O-2911 (1940); Open Records Decision No. 426 (1985). Because we do not have enough undisputed facts, we are unable to render a determination as to whether the requested bank account information is subject to the Open Records Act. We note, however, that the city has failed to assert any exception to required public disclosure with respect to this information. Accordingly, if the facts support a conclusion that information relating to the bank account is subject to the Open Records Act, the requested bank account information must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 28881

cc: Mr. E. J. Laurel
P.O. Box 2189
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(w/o enclosures)